IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

Bail Appl..No. 4339 of 2007()

O.R.NO.17/07 OF ADIMALI EXCISE RANGE

: PETITIONER/2ND ACCUSED

CHERIYAN VARGHESE, S/O. VARGHESE,
AGED 52 YEARS, KAITHARATH HOUSE, KALLARKUTTY,
VELLATHUVAL VILLAGE, DEVIKULAM TALUK.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTING
EXCISE RANGE, ADIMALI, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4339 of 2007

Dated this the 18th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused and he faces allegations under the provisions of the Kerala Abkari Act. A vehicle was intercepted by the excise officials. In that vehicle, 234 litres of coloured arrack was being carried. Those who were travelling in the vehicle took to their heels and could not be apprehended. A search of the vehicle led the police to certain clues. Certain documents were available in the vehicle, which related to the petitioner herein. The prosecution has a further case that the petitioner is a person involving himself in the business of illicit liquor. On the basis of the documents which established a nexus of the petitioner with the vehicle, he was arrayed as an accused. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is innocent. The petitioner was an innocent passenger in the vehicle, a jeep. He had no responsibility for what was carried in the jeep. The petitioner is ill. In fact, the documents seized from the vehicle also are relating to the treatment of the petitioner. In these circumstances, it is submitted that the petitioner does not deserve to

suffer the trauma of arrest and incarceration in prison. It is in these circumstances prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. All the passengers in the vehicle had taken to their heels. It would be puerile at this stage to assume that anyone those who ran away had no contumacious involvement in the transportation of the contraband liquor. At least for the moment it will have to be assumed that all those who sped away on seeing the excise party had contumacious roles of varying degree in the objectionable transportation. Investigation must proceed further to ascertain the persons who have culpable responsibility and the extent of their culpability. At any rate, it would be unnecessary and inexpedient to permit anyone of them to arm himself with an order of anticipatory bail. The petitioner must co-operate with the investigators. He must appear before the Investigating Officer and explain the relevant circumstances. It is unnecessary to invoke the extraordinary equitable discretion under Section 438 Cr.P.C in favour of the petitioner, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. In the facts and circumstances of the case, I find merit in the opposition by the learned Public Prosecutor. I am certainly not persuaded to agree that

this is a fit case where the petitioner deserves to be granted anticipatory bail. This is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-